

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ERIC HINES

CIVIL ACTION No. 1:17-CV-2864-NLH

Plaintiff(s)

Civil Action

vs.

**NOTICE OF MOTION FOR SUMMARY JUDGMENT
DUE TO PLAINTIFF'S FAILURE TO PROVIDE
AN APPROPRIATE AFFIDAVIT OF MERIT
PURSUANT TO N.J.S.A. 2A:53A-26**

GARY LANIGAN, PATRICK A.
HOGAM, MS. BONDS,
SHARMALIE PERERA, M.D.,
DR. ALNOCHAWATI, SCOTT
MILLER, M.D., DR. DIAZ,
JENNIFER FAIRSTEAD, SCO.
MARVIN SCO. WATERS, SCO.
PERRY, J. SGT. VALLIE,
SID. PETIT, SID. JOHN
DOE, NJ DEPARTMENT OF
CORRECTIONS, LUZ TORRES,
LINDA LINEN, ANTHONY
THOMAS, DR. COLLIER,
JOHN POWELL, JANE DOE #1
NURSE, MARCUS O. HICKS,
VICTORIA DAMICO, DR.
RALPH WOODWARD, DR.
HERBERT SMYCZEK, T.
JACKSON, C.O. MORATELLI,
C.O.L. SMITH, S.I.D.
GOFFRED, C.O. MCNEAR,
SGT. HORSEY, C.O.
BAGLIANI, SGT. PIPITONE,
NURSE CYSTAL, C.O.M.
FARDONE, NJ DEPARTMENT
OF CORRECTIONS, ET AL

Defendant(s)

TO: Joseph D. Lento, Esq.
Optimum Law Group
300 Atrium Way, Suite 200
Mt. Laurel, New Jersey 08054
Attorneys for Plaintiff(s), Eric Hines

On Notice To: Marvin L. Freeman, Esq.

State of New Jersey

Office of the Attorney General

25 Market Street, P.O. Box 112

Trenton, New Jersey 08625

Attorneys for Defendants, Gary M. Lanigan, Ms. Bonds, Sco. Martin,
Sco. Waters and NJ Department of Corrections

COUNSELORS:

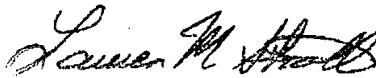
PLEASE TAKE NOTICE that on December 7, 2020 at 9:00 a.m. or as soon thereafter as counsel may be heard, the undersigned will apply to the above-named court at the Mitchell H. Cohen Building and United States Courthouse, for an Order dismissing plaintiff's complaint with prejudice for failure to provide an appropriate Affidavit of Merit in accordance with N.J.S.A. 2A:53A-26 and N.J.S.A. 2A:53A-41.

PLEASE TAKE FURTHER NOTICE that in support of this application, counsel will rely on the attached Certification of Counsel, Exhibits, and Brief.

VASIOS, KELLY & STROLLO, P.A.

Attorneys for Defendant

Scott Miller, M.D.

By: 
Lauren M. Strollo

DATED: October 30, 2020

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ERIC HINES

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**STATEMENT OF UNDISPUTED
MATERIAL FACTS**

GARY LANIGAN, PATRICK A.
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SHARMALIE PERERA, M.D.,
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MILLER, M.D., DR. DIAZ,
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Defendant(s)

1. An original pro se complaint was sent to the court on
April 26, 2017. (Docket Entry 1)

2. A first amended complaint was filed November 15, 2017.
(Docket Entry 7)

3. Attorney Charles H. Landesmann entered an appearance for plaintiff on February 22, 2019. (Docket Entry 14)

4. A second amended complaint was filed March 27, 2019. This complaint contains, in the third count, an allegation that Dr. Miller was negligent in operating on plaintiff's shoulder on March 17, 2016 and by not performing an "MRI dye." (Docket Entry 18)

5. Mr. Landesmann was relieved as plaintiff's counsel on October 16, 2019. (Docket Entry 41)

6. Plaintiff, acting pro se, filed a motion for leave to file a third amended complaint. The allegation in count 3 of that complaint against Dr. Miller is that he negligently performed surgery on plaintiff's shoulder on March 17, 2016 and was negligent in not performing an "MRI dye" in language identical to that of the second amended complaint. (Docket Entry 47)

7. Defendant Dr. Miller filed his answer to the second amended complaint on April 28, 2020. (Docket Entry 54)

8. The court entered an order permitting plaintiff to file the third amended complaint on July 15, 2020. (Docket Entry 58)

9. No affidavit of merit has been filed by plaintiff. (Docket Report)

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ORDER

GARY LANIGAN, PATRICK A.
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Defendant(s)

This matter having been opened to the Court by Vasios, Kelly
& Strollo, P.A., attorneys for Defendant, Scott Miller, M.D., for
an Order dismissing Plaintiff's Complaint with prejudice for

failure to comply with the Affidavit of Merit statute and the Court having reviewed the moving papers, and for good cause shown;

IT IS, on this _____ day of _____, 2019,

ORDERED that summary judgment is granted in favor of defendant Scott Miller, M.D., dismissing plaintiff's Complaint as to defendant, Scott Miller, M.D., with prejudice pursuant to N.J.S.A. 2A:53A-26 and N.J.S.A. 2A:53A-41 for failure to serve an appropriate Affidavit of Merit; and it is further;

ORDERED that a copy of this Order shall be electronically served via electronic filing.

J.S.C.

OPPOSITION: _____ Yes _____ No